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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KENNETH A. THELIAN, individually and on
behalf of all others similarly situated,

Plaintiff

vs.

AT&T MOBILITY LLC, NEW CINGULAR
WIRELESS PCS LLC; NEW CINGULAR
WIRELESS SERVICES, INC.,

Defendants.

Case No. 4:10-cv-03440-CW

**STIPULATION FOR STAY OF
PROCEEDINGS PENDING THE U.S.
SUPREME COURT'S DECISION IN
AT&T MOBILITY LLC V. CONCEPCION,
ORDER**

Dept: Courtroom 2, 4th Floor
Judge: Hon. Claudia Wilken

1 Plaintiff Kenneth Thelian and Defendants AT&T Mobility LLC, New Cingular Wireless
 2 PCS LLC, and New Cingular Wireless Services, Inc. (collectively, “ATTM”), by and through
 3 their respective counsel of record, hereby stipulate as follows:

4 WHEREAS:

5 1. On August 5, 2010, Thelian commenced this action by filing a complaint in this
 6 Court. In the complaint, Thelian asserts claims under federal and New York law on behalf of a
 7 putative nationwide class of ATTM customers.

8 2. The same day, Thelian filed an administrative motion to relate this case to
 9 *McArdle v. AT&T Mobility LLC*, No. CV-09-01117 (CW) (MEJ), indicating that the actions
 10 “appear to be related in that they are both class actions brought on behalf of similar classes,
 11 including roughly the same time period, name the same defendants, allege similar causes of
 12 action based on the same relevant events and allege the same damages.” *Id.* at 1. The Court
 13 issued an order relating *McArdle* and *Thelian* on August 24, 2010.

14 3. Since July 20, 2010, the *McArdle* action has been stayed pending the U.S.
 15 Supreme Court’s decision in *AT&T Mobility LLC v. Concepcion*, 09-893. See Order Granting
 16 Defendants’ Motion for Reconsideration, Denying As Moot Defendants’ Administrative Motion
 17 for Leave to Respond and Granting Defendants’ Alternative Motion to Strike, *McArdle v. AT&T*
 18 *Mobility LLC*, No. CV-09-01117 (CW) (MEJ) (N.D. Cal. July 20, 2010). This Court had held
 19 that McArdle’s arbitration agreement with ATTM is unconscionable under California law
 20 because it forbids class arbitration. In *Concepcion*, the Supreme Court likely will resolve
 21 whether the Federal Arbitration Act preempts this application of California unconscionability
 22 law, which may require the enforcement of McArdle’s arbitration agreement.

23 4. The parties agree that a stay of proceedings pending *Concepcion* also is
 24 appropriate in the *Thelian* action. Thelian is an ATTM customer residing in California. Compl.
 25 ¶ 2. The enforceability of his agreement to arbitrate disputes with ATTM on an individual basis
 26 therefore may also turn on the outcome of *Concepcion*.

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NOW, THEREFORE, THE PARTIES JOINTLY STIPULATE AS FOLLOWS:

As with the *McArdle* action, this action is stayed pending the U.S. Supreme Court's final action in *Concepcion*. Within 14 days of the date of the decision in that action, the parties shall file a joint brief that offers a proposal on how the Court should proceed in the *McArdle* and *Thelian* actions in light of the decision in *Concepcion*.

Dated: September 7, 2010

MAYER BROWN LLP

By: /s/ John Nadolenco
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Dated: September 7, 2010

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2 **IT IS SO ORDERED. The Case Management Conference set for December 14, 2010, is**
continued to March 15, 2011 at 2 p.m.

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4 Dated: September 9, 2010


5 Hon. Claudia Wilken
U.S. District Judge

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